

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	<b>CG Docket No. 02-278</b>
	)	
<b>The Petition for Reconsideration</b>	)	
	)	
<b>of the National Association of</b>	)	
	)	
<b>Realtors</b>	)	

**COMMENTS OF JOE SHIELDS IN OPPOSITION TO THE EX PARTE  
PETITION FOR RECONSIDERATION FILED WITH THE COMMISSION BY  
THE NATIONAL ASSOCIATION OF REALTORS**

I respectfully submit to the Commission these Comments in Opposition to the Ex Parte Petition for Reconsideration letter dated November 5, 2004 filed by the National Association of Realtors (CG Docket No. 02-278, DA 04-3185A) with the Commission. See also the Petition for Reconsideration and the Ex Parte Submissions filed by the National Association of Realtors filed with the Commission on August 25, 2003, April 28, 2004 and October 21, 2004.

The National Association of Realtors (hereinafter "NAR") letter filed with the Commission dated November 5, 2004 makes statements, which in this commentor's opinion are misrepresentative of the facts. The court decisions submitted by this commentor are neither outdated nor irrelevant to the requested reconsideration of the Commissions rules. Both court decisions are on point and have not been overturned by any later court decision.

The AT&T case dealt with the defense that the plaintiff's telephone number was listed by Dun & Bradstreet as a business number:

"In its defense, AT & T argued that Dun & Bradstreet lists the phone number as a **business number**. AT & T presented a facsimile captioned as a Dun & Bradstreet Company Report to support its position. However, Mr. Adamo presented his phone bills that categorize the number as residential. With regard to this issue, the Magistrate made the following finding: [T]his Court has had the opportunity to visit this question on two other occasions with the Plaintiff. In each case, the evidence showed that the number in question \* \* \* listed and billed as a private residence." 2001 TCPA Rep. 1087, 2001 WL 1382757, 2001 Ohio App. LEXIS 4989 (Ohio App. Nov. 8, 2001)

The Margulis case dealt with the defense that the residence was used as a business:

Defendant argues that if the calls were received by "business" telephone numbers, Plaintiff's cause of action fails. Margulis v. Fairfield Resorts, Inc., 2004 TCPA Rep. 1292 (Mo. Cir. Aug. 3, 2004).

Besides fitting the plain language of the term "residential telephone subscriber," applying the TCPA to a person who has subscribed to "residential" telephone service regardless of subjective inquiry into the types of activities taking place in that residence also makes practical sense. Margulis v. Fairfield Resorts, Inc., 2004 TCPA Rep. 1292 (Mo. Cir. Aug. 3, 2004).

The Commission may note that the Margulis decision includes multiple and specific references to and comes a year after the Commission's June 26, 2003 Report and Order.

NAR has requested that the Commission rule that a residence is a business if the homeowner advertises for sale property of significant value i.e. the residence. NAR's position overlooks the fact that the residential aspect of the residence or residential telephone line(s) has not changed. NAR is claiming that advertising property with a significant value such as a Mercedes 300SL Gullwing (approximately \$1 million at auction) converts a residence to a business. A ruling by the Commission in favor of NAR's request for reconsideration would make automobile brokers and auctioneers exempt from calling a homeowner advertising for sale a Mercedes 300SL Gullwing even if the homeowner had registered their residential telephone number(s) on the National Do-not-call Registry. It is inappropriate to use a property value as a threshold to determining whether a telephone number is billed as residential or business service.

This commentor also believes that NAR is misrepresenting the "home based business" exemption that the FTC has created. Selling a home is certainly not a "home based business" just as restoring and maintaining a Mercedes 300SL Gullwing as a hobby with the possibility of return on an investment is not a "home based business".

I again respectfully request that the Commission, if further clarification is even necessary, clarify that the classification of residential telephone line subscriber turns on how the telephone service is billed and not by how someone that wants to sell their services categorizes the activities within, surrounding or dealing with a residence.

Respectfully submitted,

\_\_\_\_\_/s/

Joe Shields  
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**Certificate of Service:**

I hereby affirm and state that a true and accurate copy of these Comments in Opposition to the Ex Parte Petition of the National Association of Realtors was mailed via first class mail, with sufficient postage paid to Petitioners legal representative:

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